

**LOUISIANA  
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT**

**LABOR  
COMPLIANCE  
MANUAL**

**Prepared by  
Headquarters Compliance Section  
2012**

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**\*Will denote if changes or additions made to the chapter**

# **CHAPTER I**

## **PURPOSE**

**The purpose of this Labor Compliance Procedure Manual is to acquaint Department personnel with information concerning policies, responsibilities and procedures applicable to the labor compliance provisions of all highway construction contracts.**

**This manual provides guidance concerning enforcement of Federal Labor standards requirements by the State, which is primarily responsible for carrying out Federal requirements.**

**The manual was prepared in the DOTD Compliance Section. It is recognized that in the course of labor compliance inspections and investigations of complaints, problems may arise which are not clearly answered by the contents of this manual. Such problems should be referred to this office.**

## **CHAPTER II**

### **STRUCTURE**

**The DOTD Construction Engineering Administrator and the Compliance Programs Director has delegated the responsibility for enforcement of the Labor Compliance Standards to the EEO AND LABOR COMPLIANCE MANAGER who is versed in such matters and are available to answer questions to anyone desiring such information.**

# **CHAPTER III**

## **LABOR COMPLIANCE PROCEDURES**

### **A. DOTD Review Procedures**

The current Federal Highway Administration's Labor Compliance Manual and Department of Labor Field Operations Handbook are followed by the Department to assure compliance with the requirements of the contract.

### **B. Notification of Requirements**

#### **1. Construction Section Personnel**

- a. Construction Section personnel receive all federal directives relating to Labor Compliance contract requirements, guidelines and required procedures through Labor Compliance Section.
- b. Construction Section personnel have access to a copy of the formal, executed contract and refer to it continually throughout the progress of the project.

#### **2. Contractors**

- a. The principal means of informing contractors of the labor compliance contract requirements is by clear, written description of all such requirements being included as part of each proposal and executed contract in the form of "Required Contract Provisions", "Minimum Wage Determination" and where appropriate, "Special Provisions".

1. By including all requirements in the project proposal, even potential bidders are put on notice that, if declared to be the successful bidder and awarded the contract, they will be obligated to fulfill all requirements as specified.

2. In signing the contract, the contractor acknowledged that he/she is contractually committed to carrying out the requirements as specified.

- a. The requirements may be more fully explained and discussed in preconstruction conferences, site inspections, project reviews and/or other meetings between the contractor and personnel of the Department.

- b. Advice and clarification of labor compliance matters are readily available to the contractor by contacting the project engineer or Compliance Section Labor Compliance Section personnel.

## **CHAPTER IV**

### **DUTIES OF HEADQUARTERS LABOR COMPLIANCE SECTION MANAGER**

**EEO-LABOR COMPLIANCE MANAGER – Primarily responsible for the interpretation and enforcement of the labor compliance standards of the contract.**

**Detailed duties as follows:**

- 1. Whenever possible, the compliance manager will attend preconstruction conferences to assist the contractors and project engineers in all matters regarding labor compliance.**
- 2. Maintain a supply of Standard Form 1444, Request for Authorization of Additional Classification and Rate, and provide such forms to contractors who elect to utilize a classification and wage rate which is not included in the minimum wage determination of the contract. The completed reports are then sent to the compliance officer, who, in turn, signs the report then forwards it to the U. S, Department of Labor for approval. The U.S. Department of Labor will advise the Department as to its acceptance of the proposed additional classification and wage rate.**
- 3. A web site for the required bulletin board posters for the contractors.**
- 4. Contact each project engineer's office at least once a year to review their procedures regarding Labor Compliance and provide training to field office personnel where required.**
- 5. Review contractor and subcontractor payrolls submitted to the Labor Compliance officer. A minimum of 25% of payrolls submitted on Federal-Aid projects will be thoroughly reviewed to assure compliance with all Davis-Bacon requirements.**
- 6. Conduct investigations and audits of contractor's payroll records whenever violations are noted or complaints are received from contractor employees. Interview contractor's employees and DOTD project personnel to determine if employees are being misclassified or underpaid. Calculate back wages due to employees, then notify the contractor, in writing or e-mail, of the violations and require that restitution of back wages due be paid within a certain period of time. Should the contractor fail to pay the employees and provide the compliance office with proof of payment within the allotted time period, a letter is written to the DOTD Financial Services Administrator, signed by the DOTD Construction Engineering Administrator, authorizing the withholding of certain funds from the contractor until the contractor is in full compliance.**

- 7. Maintain a copy of all payrolls received for a period of three (3) years from the date of final acceptance of the project.**
- 8. Review all Requests for Reimbursement for Training Reports submitted by the project engineers to the Construction Audit Section to ensure that approved on-the-job trainees are receiving the appropriate percentage of journeyman rate based upon the number of training hours completed in an approved training program.**
- 9. Provide the project engineers with a copy of the appropriate training program whenever trainees are receiving the appropriate percentage of journeymen rate based upon the number of training hours completed in an approved training program.**
- 10. Prepare a DOTD Labor Compliance Manual to include pertinent labor compliance information and responsibilities. Issue memorandums to field personnel regarding any changes in labor compliance matters.**
- 11. Represent DOTD whenever Labor Compliance Reviews are conducted by FHWA, Legislative Auditors or DOTD Internal Audit Section.**
- 12. Maintain a list of all noted labor violations and submit this information semi-annually to FHWA. This information is used by FHWA Division Office in completing Form FHWA -1494, Semi-Annual Labor Compliance Enforcement Report.**
- 13. Provide pertinent information to the U. S. Department of Labor, Wage and Hour Division, to assist them in conducting statewide highway wage surveys in Louisiana.**
- 14. Frequently, questions will arise on Davis-Bacon projects regarding proper classifications, payrolls, material supplies, subcontractors, owner-operators, fringe benefit plans, etc. These should be referred to the Labor Compliance Manager for clarification and interpretation.**
- 15. Develop and maintain a line of communications with the engineering consultants.**
- 16. Maintain a file on all active FAP projects that are required to have Davis-Bacon requirements. This is done by using a spread sheet, content manager and in some cases hard copies.**

## **CHAPTER V**

### **DUTIES OF PROJECT ENGINEERS AND OFFICE PERSONNEL**

Detailed duties as follows:

1. Discuss the labor compliance provisions with the contractors at preconstruction conferences.
2. Assure that all classifications to be utilized on the project are included in the minimum wage determination of the contract. When additional classifications are needed, the project engineer will notify the Compliance Manager who will assure that the proper forms are completed by the contractor.
3. Assure that the required posters, notices and contract wage determinations are posted on the project site bulletin board.
4. Prepare a daily diary to include all subcontractors working on the project.
5. Assure that all subcontractors shown on the diary are included on the weekly progress report and that all subcontractors have been approved by DOTD prior to their beginning work.
6. Assure that contractor and subcontractor payrolls are received within seven (7) days after payment is made to the employees. Prime contractors must submit copies of the Statement of Compliance and certified payrolls beginning with start date of work and through Final Inspection unless there is other work (i.e. punch list). Subcontractors only submit the required reports when work is performed on the project. If payrolls are not received in a timely manner, the Construction Audit Section will be notified that the estimate will not be paid.
7. Ensure that all payrolls contain the following data: (a) the employee's full name and the last four numbers of the social security number or employee number, (b) the employee's correct classification, (c) the hourly straight time and overtime wage rate, (d) the daily and weekly hours worked in each classification, (e) the itemized deductions made, (f) the actual wages paid and (g) the STATE PROJECT NUMBER. The Statement of Compliance must be completed and signed by the contractor representative (the first one).
8. Review each payroll for completeness and accuracy, and upon completion, each payroll will be transmitted by the reviewer.
9. All wage discrepancies will be brought to the attention of the contractor. Once the back wages due have been paid, a supplemental payroll and a copy of the check issued will be forwarded to the project engineer.



- 10. Determine if there is a disproportionate number of apprentices, trainees (OJT) or helpers to journeyman on the project. In the event a contractor's payroll would show apprentices, trainees or helpers in classifications where there are no journeymen, the Compliance Section will be notified.**
- 11. Obtain from the contractor a certification of apprenticeship whenever an employee is listed on the payroll as an apprentice. This will show that the apprentice is indentured and will also include the approximate wage rate for each apprentice.**
- 12. The Trainee Information Form will be completed for each approved trainee on the project. This form will be used to maintain the number of hours each trainee receives weekly and will serve to check the trainee's proper rate of pay and to verify the Request For Reimbursement For Training submitted monthly to the project engineer.**
- 13.\* The Project Site Standard Interview Form will be utilized to interview a minimum of two (2) employees each month on each Federal-Aid project. The completed interview form will be turned in to the person responsible for checking contractor payrolls. A comparison of the interview form to the payroll will be made to assure that employees are being classified and paid correctly. The payroll checker will then sign the interview form in the space provided and scan into content manager Contractors Payrolls. See the form in the Forms Section.**
- 14. Comply with EDSM and memoranda issued by DOTD Construction Section personnel.**
- 15. Assist the Compliance Manager, representatives of FHWA and Department of Labor in the investigation of complaints or reports of violations.**

## **CHAPTER VI**

### **FORMS**

**Many forms will be found on the Intranet under the Doing Business With DOTD then to the Compliance Programs Page and then to Forms and Manuals. The forms for the district gangs will be located in the Common 40 section or can be sent to them from the Labor Compliance Manager.**

## INSTRUCTIONS FOR PREPARATION FOR STATEMENT OF COMPLIANCE

This statement of compliance meets needs resulting from the amendment of the Davis-Bacon Act to include fringe benefits provisions. Under this amended law, the contractor is required to pay fringe benefits as predetermined by the Department of Labor, in addition to payment of the minimum rates. The contractor's obligation to pay fringe benefits may be met by payment of the fringes to the various plans, funds, or programs or by making these payments to the employees as cash in lieu of fringes.

The contractor should show on the face of his payroll all monies paid to the employees whether as basic rates or as cash in lieu of fringes. The contractor shall represent in the statement of compliance that he is paying to others fringes required by the contract and not paid as cash in lieu of fringes. Detailed instructions below:

### Contractors who pay all required fringe benefits:

A contractor who pays fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor shall continue to show on the face of his payroll the basic cash hourly rate and overtime rate paid to his employees, just as he has always done. Such a contractor shall check paragraph 4(a) of the statement to indicate that he is also paying to approved plans, funds, or programs not less than the amount predetermined as fringe benefits for each craft. Any exception shall be noted in Section 4(c).

### Contractors who pay no fringe benefits:

A contractor who pays no fringe benefits shall pay to the employee and insert in the straight time hourly rate column of his payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringes, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on the basic or regular rate plus the required cash in lieu of fringes at the straight time rate. To simplify computation of overtime, it is suggested that the straight time basic rate and cash in lieu of fringes be separately stated in the hourly rate column, thus \$3.25/.40. In addition, the contractor shall check paragraph 4(b) of the statement to indicate that he is paying fringe benefits in cash directly to his employees. Any exceptions shall be noted in Section 4(c).

### **Use of Section 4(c), Exceptions**

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the employees as cash in lieu of fringes. Any exceptions to Section 4(a) or 4(b), whichever the contractor may check, shall be entered in Section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid the employees as cash in lieu of fringes, and the hourly amount paid to plans, funds, or programs as fringes.

STATEMENT OF COMPLIANCE

Date: \_\_\_\_\_

I \_\_\_\_\_, \_\_\_\_\_, do hereby state  
(Name of signatory party) (Title)

(1) That I pay or supervise the payment of the persons employed by \_\_\_\_\_ on  
(Contractor or subcontractor)

the \_\_\_\_\_, that during the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_,  
(Project number)

\_\_\_\_\_ and ending the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ all persons employed on said project have been paid  
(Year) (Year)

paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said  
\_\_\_\_\_ from the full weekly wages earned by any person and that no deductions have  
(Contractor or subcontractor)

been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act as amended (48 Stat 948, 63 Stat 108, 72 Stat 967, 76 Stat 357, 40 U S C 276c), and described below:

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(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete, that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract, that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ In addition to the basic hourly wage rates paid to each labor or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4 (c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ Each Laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4 (c) below

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION
REMARKS	
NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES

## PROJECT SITE STANDARDS INTERVIEW

STATE PROJECT NUMBER: \_\_\_\_\_ DATE: \_\_\_\_\_  
PARISH \_\_\_\_\_  
CONTRACTOR: \_\_\_\_\_ PRIME: \_\_\_\_\_ SUB: \_\_\_\_\_  
EMPLOYEE'S NAME: \_\_\_\_\_ S.S. NUMBER: \_\_\_\_\_  
EMPLOYEE'S ADDRESS: \_\_\_N/A\_\_\_\_\_ (Last 4 digits)

Circle One: W B HIS ASIAN AMER. INDIAN  
Circle One: M or F

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### LABOR COMPLIANCE:

1. What is your job classification? \_\_\_\_\_
2. What is your hourly rate of pay? \_\_\_\_\_
3. Have you seen the wage rates posted on the job site? YES \_\_\_\_\_ NO \_\_\_\_\_
4. Do you ever work more than 40 hours a week? YES \_\_\_\_\_ NO \_\_\_\_\_
5. Do you receive time and a half for overtime? YES \_\_\_\_\_ NO \_\_\_\_\_
6. Were you ever underpaid on this project? YES \_\_\_\_\_ NO \_\_\_\_\_
7. Have back wages due been satisfied? YES \_\_\_\_\_ NO \_\_\_\_\_
8. Do you feel you are being paid properly according to the posted wages? YES \_\_\_\_\_ NO \_\_\_\_\_

### EQUAL EMPLOYMENT OPPORTUNITY:

9. Have you seen the posters on EEO? YES \_\_\_\_\_ NO \_\_\_\_\_
10. Do you know who the Company EEO Officer is? YES \_\_\_\_\_ NO \_\_\_\_\_
11. Were you given a written copy of the Company's EEO Policy? YES \_\_\_\_\_ NO \_\_\_\_\_
12. Do you have meetings to explain the Company's EEO Policy? YES \_\_\_\_\_ NO \_\_\_\_\_
13. Have you ever put in a complaint about discrimination? YES \_\_\_\_\_ NO \_\_\_\_\_
14. Do you feel that, in general, all workers on this project receive equal treatment, regardless of their race, religion, etc? YES \_\_\_\_\_ NO \_\_\_\_\_
15. Other questions or comments: \_\_\_\_\_

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SIGNATURE OF INTERVIEWER: \_\_\_\_\_

For use of payroll checkers: Is the above information in agreement with payroll data and contract requirements? YES \_\_\_\_\_ NO \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF PAYROLL CHECKER DATE

**There will be 2 interviews per month which can include the prime contractor and/or the subcontractor after they have been on the site for one week. All forms after being checked will be placed in content manager under contractor's payroll. Put in the remarks section Project Site Interview.**

## **CHAPTER VII**

### **POSTERS**

Posters for the construction site are furnished through the Compliance Section web site. The required posters are:

1. **THE LAW English/Spanish**
2. **WAGE RATE INFORMATION FEDERAL-AID HIGHWAY PROJECT**
3. **NOTICE - TITLE 18 UNITED STATES CODE, SECTION 1020**
4. **JOB SAFETY AND HEALTH PROTECTION**
5. **NOTICE TO ALL EMPLOYEES**
6. **NOTICE EMPLOYEE POLYGRAPH PROTECTION ACT**
7. **YOUR RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993**
8. **LOUISIANA PROHIBITS DISCRIMINATION IN EMPLOYMENT DUE TO GENETIC INFORMATION**
9. **WORKERS' COMPENSATION FRAUD**
10. **NOTICE TO WORKERS UNEMPLOYMENT INSURANCE BENEFITS**
11. **OSHA**
12. **USERRA**

## **CHAPTER VIII**

### **MISCELLANEOUS ACTIVITIES**

- 1. FHWA predetermined wage letter**
- 2. How to find wages on the Internet**
- 3. Site of work**
- 4. Apprentices and Trainees**



**REGION 6**

**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION**

**5304 FLANDERS DRIVE, SUITE A.  
BATON ROUGE, LOUISIANA 70808**

February 29, 2000

**IN REPLY REFER TO**

Required Contract Provisions  
Federal-Aid Construction  
Contracts Payment of  
Predetermined Minimum Wage

Kam K. Movassaghi, Ph.D., P.E.  
Secretary  
Department of Transportation and Development  
Baton Rouge, Louisiana

Attention: Mr. Jimmy Little, Chief Construction Engineer

Dear Dr. Movassaghi:

In response to your February 15, 2000 letter we offer the following interpretation. Section IV, Payment Of Predetermined Minimum Wage, of the Required Contract Provisions Federal-Aid Construction Contracts states that "projects located on roadways classified as local roads or rural minor collectors" are exempt from the predetermined minimum wage provision. Therefore, the off-system bridge projects would be exempt from requiring the predetermined minimum wages in the contract. Also, any other projects on roads classified as local road or rural minor collector are exempt. We recommend that you refer to the LDOTD's highway classification maps when making a determination of roadway classification.

Please advise if you have any questions regarding this matter.

Sincerely yours,

William C. Farr  
Program Operations Manager

Enclosure



## HOW TO FIND WAGE DETERMINATIONS ON THE INTERNET

- 1) Go to : [www.dol.gov](http://www.dol.gov)
- 2) Under The U.S. Department of Labor Home Page Go to : **FIND IT** (left side of page) – under **JOB – BY TOPIC** – Click on **WAGES**
- 3) You are now on **WAGES** page – under **SUBTOPICS** (right side of page) – Click on **GOVERNMENT CONTRACTS**
- 4) **WAGES** page (Government Contracts) : Under **DOL WEB PAGES ON THIS TOPIC** – click on **DAVIS-BACON WAGE DETERMINATION**
- 5) Click on **GPO ACCESS: DAVIS-BACON WAGE DETERMINATIONS**
- 6) You are now on Davis-Bacon Wage Determination page – in the **red section** – click on **BROWSE ALL DETERMINATION BY STATE**
- 7) Go To **LOUISIANA** and click
- 8) You are now on: **General Decision County Index State: La.** **(save this site)** – scroll to the parish you need

## SITE OF THE WORK

### **Definition** (29 CFR 5.2(l))

**5.2(l) (1)** – “Site of the work” is the physical place or places where the building or work called for in the contract will remain, and **any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project.**

**5.2(l)(2)** - Except as provided in paragraph 5.2(l)(3), batch plants, borrow pits, job headquarters, tool yards, etc., are part of the “site”, provided they are dedicated exclusively, or nearly so, to the contract or project, and are adjacent or virtually adjacent to the site of the work as defined in paragraph 5.2(l)(1).

**5.2(l)(3)** - Not included in the “site of work” are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular federal or federally assisted project. Also excluded from the “site of work” are fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the site of the work as stated in paragraph 5.2(l) (1), even where such operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

4(a) **Apprentices** - Apprentices are permitted to work at less than the predetermined rate **only** when **all** of the following conditions are met:

Employed pursuant to and **individually registered** in a bona fide apprenticeship program registered with the U.S. DOL, Bureau of Apprenticeship and Training (BAT), or with a state apprenticeship agency recognized by BAT. (**Note – the program itself must be registered and the apprentice must be individually registered in the program.**)

The allowable **ratio** of apprentices to journeymen **on the job site** in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program.

Labor standards for apprentices also have requirements for how to pay fringe benefits and provide for portability of apprenticeship programs.

The labor standards specify that if a contractor violates any of the provisions, then the person considered to be an apprentice must receive the full amount of the applicable prevailing wage rate for the classification of work performed.

(b) **Trainees** - Trainees are permitted to work at less than the predetermined rate only when all of the following conditions are met.

Employed pursuant to and **individually registered** in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training (BAT). (**Note: State agency approval of trainee programs is not recognized for DBRA purposes.**)

The **ratio** of trainees to journeymen **on the job site** shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Labor standards for trainees also have requirements for how to pay fringe benefits.

There is no portability of a trainee program from one locality to another.

## CHAPTER IX

### TRUCKING

1. Does it matter who employs the truck driver for the application of Davis Bacon?

**Answer:**

No. In the decision reached in *Building and Construction Trades Dept. v. Midway*, decided on May 17, 1991, the Court of Appeals for the District of Columbia Circuit held that language in Department of Labor (DOL) regulation was inconsistent with the Davis-Bacon Act. That case involved truck driver employees of the prime contractor's wholly owned subsidiary, who were delivering materials from a commercial supplier to the construction site. The material delivery truck drivers spent ninety percent of their workday on the highway driving to and from the commercial supply sources, ranging up to 50 miles round trip and stayed on the site of the work only long enough to drop off their loads, usually for not more than ten minutes at a time. At issue before the D.C. Circuit was whether the “material delivery truck drivers” were within the scope of construction as defined by the regulatory provision then in effect at 29 CFR 5.2(j). The Court of Appeals ruled that material delivery truck drivers, who come onto the site of the work merely to drop off construction materials, are not covered by the Davis-Bacon Act even if they are employed by the government contractor, because they are not “employed directly upon the site of the work”. Subsequent Appeals Court rulings in two other cases further addressed the scope of the “site of the work”. In a Final Rule published in the Federal Register on December 20, 2000, 65 FR 80268-80278, the Department of Labor issued revised regulatory definitions of the terms “site of the work” and “construction”.

2. Are truck drivers employed by a construction prime contractor or subcontractor to transport materials or equipment from the contractor or subcontractor’s plant or yard to a Davis-Bacon covered project, or from a Davis-Bacon covered project to the contractor’s / subcontractor’s plant or yard covered?

**Answer:**

If the contractor/subcontractor’s *plant or yard is part of the “site of the work”*, the drivers are covered. If the contractor/subcontractor’s plant or yard *is not part of the “site of the work”*, the drivers are not covered. Department of Labor (DOL) regulations 29 C.F.R. § 5.2(j) (2) states that the transportation of materials or supplies to or from the “site of the work” by the employees of the construction contractor or a construction subcontractor is not construction. Thus, transportation of such materials or supplies is not covered unless the transportation is between the construction work area and a dedicated facility located “adjacent or virtually adjacent” to the construction site. Driving to and from a commercial facility that serves the general public (not established to serve the project) would not be covered even if it is adjacent or virtually adjacent to the covered construction area.

3. Are drivers transporting materials or equipment from one Davis-Bacon project to another Davis-Bacon project covered?

**Answer:**

Generally, no. Again the regulatory definition of “construction ...” specifically states that the transportation of materials or supplies to or from the “site of the work” is not considered construction (29 CFR 5.2(l) (2). Nevertheless, there may be some instances where the two sections of highway construction are contiguous and the transportation of materials or equipment is all on the “site of the work” of both sections that constitute a combined covered project.

4. Are drivers transporting material or equipment away from a Davis-Bacon project or another project of the contractor which is not a Davis-Bacon project covered?

**Answer:**

No. Unless the transportation of such materials or equipment is to a dedicated facility located adjacent or virtually adjacent to the construction area.

5. Truck drivers are engaged in hauling excavated material, debris, dirt, asphalt, etc., for recycling away from a Davis-Bacon covered construction site.
- Is the time spent loading at the site covered?
  - Is the time transporting the material away from the site covered?
  - Is the time unloading the material covered?

**Answer:**

Assuming that the location or facility to which the excavated material or debris will be transported is not a facility that is part of the “site of the work” (adjacent or virtually adjacent to the construction work area: and dedicated exclusively or nearly so to the performance of the contract or project):

- If the time spent on the site is not more than *de minimis*, then loading the debris, dirt, asphalt, etc., is not covered.
  - The time transporting the material away from the covered site is not covered. The regulation specifically states that the transportation of materials or supplies to or from the “site of the work” is not considered construction.
  - The time unloading the material off site is not covered. Davis-Bacon only applies to work done on the “site of the work”.
6. Are truck drivers who are employed by an independent contractor or bona fide material man to haul material to a covered project from a non-covered supply source (i.e., sand or gravel pit, asphalt plant serving the public in general) covered?

**Answer:**

No. If the material source is commercial in nature and supplies the general public, then the drivers are generally not covered. However if the time spent on the site of work is more than de-minimis (20% of the truck driver’s work week), the driver would be covered. (regardless of whether they are employed by the contractor or subcontractor or by an independent contractor or bona fide material man/supplier).

7. In situations where truck drivers are employed by an independent contractor or a material man to deliver materials to the “site of work” from covered supply sources (e.g., batch plants or borrow pits, stockpiles, etc.) which have been established to serve exclusively, or nearly so, the covered project), are such drivers covered?

**Answer:**

Yes. If the supply facility is part of the “site of the work” because it is dedicated (exclusively or nearly so) to performance of the contract or the project and located within or near the project limits – “adjacent or virtually adjacent” to the actual construction site.

Note: DOL has an **enforcement position** with respect to bona fide owner-operators of trucks that own and drive their own trucks. Certified payrolls including the names of such owner-operators do not need to show the hours worked or rates paid, only the notation “owner-operator”. This position does not apply to owner-operators of other equipment such as bulldozers, backhoes, cranes, welding machines, etc.

## CHAPTER X

### PAYROLLS

3(a) **Maintaining basic payroll records** - The **contractor** must maintain basic payroll records during the course of the work and preserve them for three years. Such records shall contain:

Name of each worker

Last four digits of the Social Security Number or an individual identifying number.

His or her correct classification

Hourly rates of wages paid

Daily and weekly number of hours worked

Deductions made and actual wages paid

Contractors employing apprentices or trainees under approved programs must have written evidence of the registration of the apprenticeship program and certification of the trainee program, copies of the individual registration forms of the apprentices and trainees, and written evidence of the applicable ratios and wage rates.

(b) **Submission of certified payroll records** - The contractor must submit **weekly** a copy of all payrolls to the contracting agency. The payrolls submitted must set out accurately and completely all of the basic payroll information listed above.

The payroll information may be submitted in any form desired. Optional payroll form WH-347 is available (from the Government Printing Office, (202) 512-1800, and at 48 CFR 53.303-WH-347). The payroll information also is available on Wage and Hour website at:

<http://www.dol.gov/esa/forms/whd/index.htm>

The prime contractor is responsible for the submission of the certified payrolls to the contracting agency (including for all subcontractors on the project).

Each payroll submitted must be accompanied by a "Statement of Compliance" as required by the Copeland Act and 29 CFR

#### **Examination of Certified Payrolls**

An examination of the contractor's certified payrolls should be made for accuracy, completeness, and true representation of the facts. The examination should cover the current or most recent payrolls as well as those for selected periods which reflect the practice of the contractor or subcontractor during the life of the contract.

1. Check for completeness and accuracy of the payrolls as to the names, addresses, job classifications, hourly wage rates, daily and weekly hours worked during the payroll period, gross weekly wages earned, and deductions made from wages, and net weekly wages paid the employee. Notice if there are distinctions made among the various classifications.
2. If the Contract Work Hours and Safety Standards Act are applicable and an employee worked in excess of forty hours in any workweek, determine whether time and a half the employee's regular rate was paid.
3. Certified payrolls should be examined for discrepancies such as a disproportionate number of laborers, apprentices or helpers on the project.
4. The wage rates should be compared against those listed on the wage determination. If workers perform work in more than one classification, the payroll records should accurately reflect the time spent working in each. Unlisted classifications should be identified and additional classification procedures initiated, if applicable.

5. Check for contributions to fringe benefit plans.

The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution. Thus, the contractor is put on notice in the contract itself that criminal prosecution could result if falsified payrolls are submitted to the government.

The contractor or subcontractor must make the payroll records available for inspection, copying, or transcription by authorized representatives of the contracting agency or the DOL, and must permit such representatives to interview employees during working hours on the job.

If the contractor or subcontractor fails to submit the required records or to make them available, the federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds.

Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action.

# **CHAPTER XI**

## **FRINGE BENEFITS**

### **“BONA FIDE” FRINGE BENEFITS**

An employer may discharge his/her obligation to provide fringe benefits by paying the specified fringe benefit contributions to a trustee or third person pursuant to a “bona fide” fund, plan, or trust on behalf of covered employees. Examples are life or health insurance, pension plan or retirement plans. 29 CFR 4.170 and 4.171.

To be considered a “bona fide” fringe benefit for purposes of the, a fringe benefit plan, fund or program must constitute a legally enforceable obligation which meets the following criteria. 29 CFR 4.171.

The fringe benefit plan, fund or program must be specified in writing and must be communicated in writing to the affected employees.

The primary purpose of the plan must be to provide systematically for the payment of benefits to employees on account of death, disability, advanced age, retirement, illness, medical expenses, hospitalization, supplemental unemployment benefits, and the like.

The plan must contain a definite formula for determining the amount to be contributed by the contractor and a definite formula for determining the benefits for each of the employees participating in the plan.

Contributions must be made pursuant to the terms of such plan, fund, or program. Any contributions made by employees must be voluntary, and if such contributions are made through payroll deductions, such deductions must be made in accordance with 29 CFR 4.168. (No contribution towards fringe benefits made by the employees themselves or provided from monies deducted from their wages may be included or used by an employer in satisfying any part of any fringe benefit obligation.)

Generally, the contractor’s contributions must be paid irrevocably to a trustee or third person, no less often than quarterly, pursuant to an insurance agreement, trust or other funded arrangement (except as indicated below with regard to certain “unfunded” fringe benefit plans).

Unfunded fringe benefit plans: With the exception of fringe benefit plans to provide vacations and holidays, unfunded "self-insured" plans under which a contractor typically pays insurance claims out of pocket to cover fringe benefit obligations are normally not considered "bona fide" plans or equivalent benefits for purposes of SCA. 29 CFR 4.171(b). A contractor must request approval by the Administrator of the Wage and Hour Division for an unfunded self-insured plan. 29 CFR 4.171(b) (2).

The following are not bona fide fringe benefits (nor can they be considered equivalent benefits):

Benefit plans or trusts which are disapproved by the Internal Revenue Code as not satisfying the requirements of the Internal Revenue Code or which do not meet the requirements of the Employee Retirement Income Security Act of 1974. 29 CFR 4.171(a) (5)

Any benefit required by any other Federal law or by any State or local law, such as unemployment compensation, workers’ compensation, or social security. 29 CFR 4.171(c).

Board, lodging or other facilities for which the cost or value, determined in accordance with regulations under the FLSA contained in 29 CFR 531, is creditable toward the monetary wages specified under the Act. 29 CFR 4.171(d) and 4.167.

Facilities primarily for the benefit or convenience of the contractor or the cost of which is properly a business expense of the contractor, such as relocation expenses, travel and transportation expenses incident to employment; incentive or suggestion awards, recruitment bonuses; tools and other materials and services incidental to the employer's performance of the contract and the carrying on of his business; and the cost of furnishing, laundering, and maintaining uniforms and/or related apparel or equipment where employees are required by the contractor, the SCA contract, by law, or by the nature of the work, to wear such items. 29 CFR 4.171(e) and 4.168.

Contributions by contractors for such items as social functions or parties for employees, flowers, cards, or gifts on employee birthdays, anniversaries, etc. (sunshine funds), employee rest or recreation rooms, paid coffee breaks, magazine subscriptions, and professional association or club dues. 29 CFR 4.171(f).

Fringe benefits and overtime pay:

CWHSSA requires that on contracts to which it applies, any laborer or mechanic who works over 40 hours in a workweek must be compensated "at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek". The basic rate of pay excludes bona fide fringe benefits and cash equivalent payments.

29 CFR 778.215 and 29 CFR 4.180-4.182 discuss the parallel exclusion of fringe benefits from the "regular rate" for overtime purposes under the FLSA.

## **FRINGE BENEFIT REQUIREMENTS – VACATION BENEFITS**

Vacation fringe benefits can be determined from the language of the fringe benefit provision in the wage determination.

By requiring prospective contractors who employ the same personnel to provide the same vacation benefits as an incumbent contractor, equity in bidding is achieved - otherwise the incumbent contractor would be at a distinct disadvantage when bidding.

Vacation need not be paid immediately but must be provided at a mutually agreed upon time or payment made before the next anniversary date of employment, termination of employment, or completion of the current contract, whichever occurs first. 29 CFR 4.173(c) (2).



## CHAPTER XII

### FAQ

**Q. Why Davis-Bacon Act?**

**A.** To protect workers from the economic disruption caused by competition arising from non-local contractors coming into an area and obtaining federal construction contracts by underbidding local wage levels.

**Q. Who is covered under Davis-Bacon Act?**

**A.** All laborers, operators, and mechanics employed directly upon the site of the work, unconditionally not less often than once a week, and without subsequent deduction or rebate on any account.

**Q. What is the Fair Labor Law?**

**A.** The Fair Labor Law is called the Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.

**Q. Is all personal information required on each payroll?**

**A.** Yes, FLSA (Fair Labor Standards Act) requires employers to keep records on wages, hours and other items (i.e. personal information), as specified in DOL recordkeeping regulations.

**Q. Overtime?**

**A.** Overtime pay for laborers, operators, and mechanics at a rate of one and one-half times the basic rate of pay for hours worked on covered contracts in excess of 40 hours in a workweek.

**Q. Do contractors receive tax exempt stats by doing work for the state?**

**A.** No, the department does not tax exempt for contractors.

**Q. Is it possible for more than one wage schedule to apply to specifications for a particular contract?**

**A.** Yes. Construction projects are generally classified as either [Building](#), [Heavy](#), or [Highway](#) for purposes of issuing wage determinations. Wage schedules for one or more of these construction categories may have application to construction items contained in a proposed construction project. Heavy wages are determined by the bridge structure or the building structure.

**Q. What wage rates must be paid to supervisory employees (foremen, superintendents, etc.) employed on a covered project?**

**A.** The wage rates for bona fide supervisory employees are not regulated under the [Davis-Bacon and Related Acts](#) because their duties are primarily administrative or executive in nature rather than those of laborers or mechanics.

- Q. A barricading company is supplying traffic control products for 20 Davis-Bacon covered projects. This supplier drops off/picks up traffic control devices at the contractor's yard for each of these 20 projects. There is no set up work involved. Are the employees of this barricading company covered?**
- A.** Generally no. If the contractor's yard is not deemed a part of the "site of work", the employees are not covered. However, if the contractor's yard is deemed a part of the "site of work", then the employees would be covered if the time spent on each project is more than 20% of their work week.
- Q. Would these workers be covered if they are not only involved in drop off/pick up, but are also involved in setting up and servicing the traffic control products?**
- A.** Yes. If a material supplier, manufacturer, or carrier undertakes to perform part of a construction contract as a subcontractor, its laborers and mechanics employed at the site of the work are subject to the prevailing wage requirements under Davis-Bacon in the same manner as those employed by any other contractor or subcontractor.
- Q. The contractor hires a company to provide inspection services for the contractor's quality control operations on a Davis-Bacon covered project. Are the inspectors subject to prevailing wages?**
- A.** Contractors and subcontractors performing work on covered contracts are required to pay "all laborers and mechanics employed directly on the site of the work" at least the wage rates listed in the contract wage determination for the work performed, for all hours worked on the site of the work. In general, individuals who perform inspections and testing for quality control purposes are not considered laborers or mechanics within the meaning of the Davis-Bacon Act. The primary function of such employees is to take measurements and to accumulate data, upon which recommendations are based, to advise contractors how to rectify problems which may become apparent. Generally, such employees do not physically make the required corrections. If, however, such an employee spends a substantial amount of his/her time in any workweek (more than 20 percent) on the jobsite performing manual, physical, and mechanical functions which are those of traditional craftsmen, he/she would be considered laborers or mechanics for the time so spent. (The regulatory definition of laborer or mechanic is set forth in 29 CFR 5.2(m).)
- Q. The contractor hires an engineering firm to provide surveying and staking activities for a Davis-Bacon covered project. Are these workers subject to prevailing wages?**
- A.** An instrument man or transitman, rodman, chainman, party chief, etc., are not considered laborers or mechanics.

## **CHAPTER XIII**

### **LIAISON**

#### **Organizational Contact**

The Department's Headquarters Compliance Section has established and maintains effective liaison with officials of the Federal Highway Administration, the Wage and Hour Division, of the United States Department of Labor, the Secretary of the Louisiana Workforce Commission, Office of Labor, and organizations and individuals involved in labor compliance matters which might, in any way, assist in improving labor compliance procedures on highway construction projects.

#### **Communication**

Through written correspondence, telephone, in-person contact or any other appropriate media of communication, the Compliance Section personnel have made known to these agencies, organizations and/or individuals their desire to cooperate and assist fully in the conduct of ensuring compliance with all required labor provisions.

# CHAPTER XIV

## DEPARTMENT OF LABOR & FHWA GUIDELINES

(This section will be added to as deemed necessary)

### ON SITE PROJECT INTERVIEWS

#### FHWA-1273 Provisions Regarding Payrolls:

Compliance:

The STA should review the payroll statements for completeness and certification, and then "spot-check" items, such as: classification, hourly rate, authorized deduction, fringe benefits, overtime hours and rate, and net wages paid. **Through employee interviews, good cross reference checks can be made on classifications and hourly rates. The STA should refer any discrepancies to the USDOT/OIG.**

The US DOL Davis Bacon and Related Acts (DBRA) requirement for payment of prevailing wages may be found in 29 CFR Part 5. Enforcement provisions are addressed in found in Section 5.6. It states in part that, "The Federal agency shall cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by 5.5..." Also, "Investigations shall be made ... with such frequency as may be necessary to assure compliance." It further states that "Such investigations shall include interviews with employees, ... examination of payroll data..."

The FHWA's implementation of the US DOL requirement is found in Title 23 U.S.C. § 113. Section 113 states in part that, "(a) The Secretary {Dept. Of Transportation} shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors on the construction work performed on highway projects on the Federal aid highways ... be paid wages at rates not less than those ... as determined by the Secretary of Labor..." The FHWA "Labor Compliance Manual" was developed to provide guidance in carrying out the above requirement. Although the manual is out of date in the compliance policy area, the information on responsibilities and procedures is still applicable.

The Labor Compliance Manual defines Contracting Agency as the governmental unit in charge of the construction of a project. In the case of Federal aid projects, it will usually be the STA but may be a subdivision of the State which acts as the agent of a State. **The contracting agency is required to ensure that: "(a) a representative sampling of employees is interviewed ... to verify contractors' compliance; (b) on a sampling basis, contractors' and subcontractors' payroll records ... are reviewed."**

**The regulation does not require 100% coverage; it requires coverage frequency "... as may be necessary to assure compliance." It is recommended that the division office and STA agree on what that coverage is appropriate.** It is also recommended that all contractors and subcontractors on the project be included in spot checks, and that contractors or subcontractors with violations be reviewed in more detail.

<http://www.fhwa.dot.gov/programadmin/contracts/core02.cfm>

## **DOL Reduces Information Required on Davis-Bacon Certified Payroll Records**

February 9, 2009

The U.S. Department of Labor (DOL) has issued a final rule eliminating the requirement that contractors covered by the Davis-Bacon and Related Acts include employees' home addresses and Social Security numbers (SSNs) on weekly certified payroll records submitted to contracting agencies or DOL's Wage and Hour Division. DOL issued the rule "to better protect the personal privacy of laborers and mechanics employed on covered construction projects."

The effective date of the rule is January 18, 2009. This means for covered contracts entered into as the result of an invitation for bids issued or negotiations concluded on or after January 18, contractors should not include employees' home addresses or full SSNs in weekly transmittals. Instead of the SSN contractors should provide an "individually identifying number" for each covered employee. The purpose of the "individually identifying number" is to avoid confusion when more than one employee has the same name, and it may be the last four digits of the employee's SSN. For covered contracts entered into previously, contractors should continue to follow the prior rule and include home addresses and full SSNs. For those contractors using DOL Form WH-347 to submit payroll information, DOL now offers on its Web site the old form and instructions, as well as revised form and instructions. The appropriate form to use depends on the timing of contract execution. In comments to the proposed rule submitted in November, AGC expressed support for the change, agreeing with DOL that eliminating submission of such employee information is consistent with statutory mandates and helps to fulfill legitimate policy objectives, including reducing the risk of identity theft. However, AGC noted that the proposed rule could be interpreted as prohibiting subcontractors from providing such information in weekly payrolls submitted to prime contractors, which raises concerns about a prime contractor's ability to make restitution and to avoid unfair withholdings in cases of subcontractor underpayment of wages. In the final rule, DOL adopted AGC's suggestion to clarify that prime contractors may continue to require subcontractors to provide such employee information to the prime contractor without submission to the government.